HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Thursday, August 03, 2017
85th Legislature, First Called Session, Number 12
The House convenes at 10 a.m.

Seven bills and one joint resolution are on the daily calendar for second-reading consideration today. They are listed on the following page. The House also is scheduled to consider five bills on third reading.

The following House committees were scheduled to hold public hearings today: Transportation in Room E2.012 at 9 a.m. and General Investigating and Ethics in Room E1.010 at 2 p.m. or on adjournment.

The House Environmental Regulation Committee was scheduled to hold a formal meeting in Room 1W.14 (Agricultural Museum) at 9:45 a.m.

Dwayne Bohac
Chairman
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HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Thursday, August 03, 2017

85th Legislature, First Called Session, Number 12

SUBJECT: Authority to exempt deposits in bullion depository from property taxes

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 8 ayes — D. Bonnen, Darby, Murphy, Murr, Raymond, Shine, Springer, Stephenson

1 nay — Y. Davis

2 absent — Bohac, E. Johnson

WITNESSES: For — (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings; Alexie Swirsky)

Against — (*Registered, but did not testify*: Tom Tagliabue, City of Corpus Christi; Dana Blanton)

On — (*Registered, but did not testify*: Serena Kuvet and Tom Smelker, Comptroller of Public Accounts)

BACKGROUND: HB 483 by Capriglione, enacted in 2015, created the Texas Bullion Depository as an agency in the comptroller's office. The depository, to be managed by a private entity contracting with the comptroller, was established to accept deposits of precious metals from individuals and entities to be held until transferred or withdrawn, in exchange for a fee charged for the depository's services.

DIGEST: HJR 38 would allow the Legislature by general law to exempt from property taxes precious metals held by the Texas Bullion Depository and to define the precious metals that would be exempt.

The ballot proposal would be presented to voters at an election on November 7, 2017. The proposal would read: "The constitutional amendment authorizing the legislature to exempt from ad valorem taxation precious metal held in the Texas Bullion Depository."

SUPPORTERS SAY:

HJR 38, if approved by voters, would support current efforts to establish the Texas Bullion Depository and help it succeed. The depository was established by the Legislature in 2015, and this summer the comptroller announced that a private vendor had been chosen to build and operate the facility. Under current law, a deposit in the facility could be subject to property taxation by a locality because precious metals are considered tangible personal property under the Tax Code.

HJR 38 would allow the Legislature to create a statewide property tax exemption for deposits that would benefit the state by attracting more deposits to the Texas Bullion Depository and would give investors certainty about their tax obligations for precious metals held there. The state currently owns precious metals that are held in other states, for which it must pay annual holding fees. A successful state depository would bring those fees back to the Texas economy and generate income from other holders of precious metals. With a successful depository, Texas would become more self-sufficient, provide more certainty and safety for individuals and institutional investors, and realize economic benefits by keeping funds in the state and generating additional general revenue funds. Exempting deposits from property taxes would not take funds away from local taxing entities or reduce their tax bases because the deposits are not currently in Texas and might not come to the state without the exemption.

With the recent naming of a company to build and operate the depository, the project is on its way to commercial viability, and the state should do all it can to facilitate its success. Texas could fill a niche in the market for depositors who did not require accounts authorized by the Chicago Mercantile Exchange's COMEX market. For those who need COMEX accounts, the operator of the Texas depository is developing options and partnerships that could allow those investors to use the Texas facility. If the Texas depository is successful, it eventually might be authorized by the COMEX market.

OPPONENTS SAY:

Texas should not create authorization for yet another property tax exemption for a special interest group. HJR 38 specifically would assist a narrow set of investors while offering limited benefit for the average Texan and chipping away at the tax bases on which local governmental

entities depend.

OTHER OPPONENTS SAY:

HJR 38 is misguided because the Texas Bullion Depository might not be viable, even with a property tax exemption. Other depositories and options for investors already exist. In addition, it is unlikely for a variety of reasons that large institutional investors would choose a Texas depository that was not authorized by the Chicago Mercantile Exchange’s COMEX market.

NOTES:

According to the Legislative Budget Board's fiscal note, HJR 38 would cost $114,369 to publish the resolution.

HB 239 by Capriglione, the enabling legislation for HJR 38, also appears on today's calendar.

SUBJECT: Changing certain groundwater permitting processes

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 7 ayes — Larson, Phelan, Ashby, Burns, Frank, Kacal, T. King

0 nays

4 absent — Lucio, Nevárez, Price, Workman

WITNESSES: For — Hope Wells, San Antonio Water System; Dirk Aaron, Texas Alliance of Groundwater Districts; Stacey Steinbach, Texas Water Conservation Association; Shauna Fitzsimmons, Upper Trinity GCD, Prairielands GCD, Lone Star GCD, North Texas GCD; (*Registered, but did not testify*: Dirk Aaron, Clearwater Underground Water Conservation District; Ty Embrey, Middle Trinity Groundwater Conservation District; Randy Lee, San Antonio Water System; Billy Phenix, Schertz Seguin Local Government Corporation; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Dean Robbins, Texas Water Conservation Association; Thomas Parkinson)

Against — Judith McGeary, Farm and Ranch Freedom Alliance; (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings; Elizabeth Montgomery)

On — (*Registered, but did not testify*: Larry French, Texas Water Development Board)

BACKGROUND: Under Water Code, sec. 36.113, a groundwater conservation district (GCD) must require a permit to drill, equip, operate, or complete a well.

Sec. 36.122 allows a GCD to adopt rules requiring a person to obtain a permit to transfer groundwater out of the district. A GCD may not impose more restrictive permit conditions on transporters than on in-district users, unless those conditions meet certain requirements and are reasonably necessary to protect existing use.

DIGEST:

HB 26 would amend permit requirements related to operating wells and exporting water outside of a groundwater conservation district (GCD).

Operating permit applications. Only the district rules in effect when an application for a permit or permit amendment was submitted could govern the district's decision to grant or deny the application.

Exporting permits. HB 26 would prohibit a GCD from requiring a separate permit to export groundwater outside of the district and would allow an operating permit to cover the production and export of water. The bill also would repeal requirements and procedures related to exporting permits from Water Code, ch. 36. A GCD could not deny a permit because the applicant intended to export groundwater for use outside the district.

The term of an exporting permit that existed on August 17, 2017, would automatically be extended to a term no shorter than that of the associated operating permit. The exporting permit also would be automatically extended for each additional term the operating permit would be renewed or remain in effect. The exporting permit would continue to be subject to conditions contained in the permit as issued.

Operating permit moratorium. HB 26 would prohibit a GCD from adopting a moratorium on issuing operating permits or permit amendments unless the district conducted a public hearing and made written findings supporting the moratorium.

The GCD would have to publish notice of the date, time, and place of the public hearing in a newspaper generally circulated in the district at least four days before the hearing. By the 12th day after the hearing, the district would be required to determine whether to impose a moratorium.

A moratorium would expire after 90 days and could not be extended. A moratorium adopted by a GCD before December 1, 2017, would expire after February 28, 2018.

Effective date. The bill would take effect December 1, 2017, and would not apply to an administratively complete exporting permit application

received before that date.

SUPPORTERS SAY:

HB 26 would remove impediments to developing groundwater resources throughout the state by streamlining the operating permit application process. The bill would eliminate exporting permits, allowing landowners who had obtained operating permits to transport the water they rightfully own outside a groundwater conservation district (GCD). The exporting permits are not necessary because water that is transported by agricultural irrigation or through certain commodities does not need a permit.

The bill would require GCDs to consider a permit application according to rules in place when the application was submitted. This would ensure that the rules were not changed in the middle of the process, unnecessarily using up valuable time and resources by considering the application incomplete.

While moratoria on permit applications are sometimes necessary, this bill would make a positive change by limiting a moratorium to 90 days so an application could not be suspended indefinitely. A GCD also would have to seek public opinion of a proposed moratorium, increasing the transparency of the process.

Current law allows districts to review permits and make changes in accordance with district rules, which could include amending the amount of water authorized to be transferred by the permit.

The bill would clarify that GCDs were prohibited from discriminating against exporters when issuing operating permits. Landowners who use their property rights to transport water out of a district should have the same permit conditions as landowners using water in-district.

OPPONENTS SAY:

HB 26 would remove district flexibility by eliminating a GCD's ability to issue groundwater exporting permits separate from operating permits. Districts across the state have different water needs and should reserve the right to keep water inside district boundaries for aquifer recharge and other purposes. Equating crop irrigation to exporting water ignores important scientific and economic differences between these processes.

Through irrigation, water filters down into the soil or runs off into other water sources, remaining within the GCD. A separate exporting permit is needed to address actual groundwater exportation out of a district.

The automatic extension of existing exporting permits also could negatively affect a GCD's ability to manage groundwater. The bill would remove language relating to exporting permits from Water Code, ch. 36, including the ability for a district to review the amount of water that may be transferred under the permit. A district could not change the terms of an exporting permit to ensure that the volumes authorized did not harm aquifer levels or water sustainability.

The bill could allow permit applicants to take advantage of changing district rules because it would require applications to be processed according to the district rules in place at the time of submission. Applicants could rush to submit applications before an imminent rule change, undermining the ability of GCDs to respond to changing water needs.

OTHER OPPONENTS SAY:

Certain provisions of HB 26 are unnecessary. For example, GCDs already are prohibited from imposing more restrictive permit conditions on exporters than on in-district users.

SUBJECT: Establishing a brackish groundwater operating permit process

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 7 ayes — Larson, Phelan, Ashby, Burns, Frank, Kacal, T. King

0 nays

4 absent — Lucio, Nevárez, Price, Workman

WITNESSES: For — Hope Wells, San Antonio Water System; Brian Sledge, various retail public utilities and groundwater conservation districts; (*Registered, but did not testify*: Dirk Aaron, Clearwater Underground Water Conservation District, Texas Alliance of Groundwater Districts; Ty Embrey, Middle Trinity Groundwater Conservation District; Randy Lee, San Antonio Water System; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Martha Landwehr, Texas Chemical Council; Kyle Frazier, Texas Desalination Association; Jim Reaves, Texas Farm Bureau; Lindsey Miller, Texas Independent Producers and Royalty Owners Association; Dean Robbins and Stacey Steinbach, Texas Water Conservation Association; Thomas Parkinson)

Against — (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings; Elizabeth Montgomery)

On — (*Registered, but did not testify*: Robert Mace, Texas Water Development Board)

BACKGROUND: Water Code, sec. 16.060 requires the Texas Water Development Board (TWDB) to prepare a biennial progress report on the implementation of seawater or brackish groundwater desalination activities. The report includes the identification and designation of local or regional brackish groundwater production zones in areas with moderate to high availability and productivity of brackish groundwater that can be used to reduce the use of fresh groundwater.

TWDB is required to determine the amount of brackish groundwater that

the zone is capable of producing over a 30- and a 50-year period without causing a significant impact to water availability or quality. The board also must make recommendations for reasonable monitoring to observe the effects of water production in the zone.

DIGEST:

HB 27 would establish a process for groundwater conservation districts (GCDs) to issue well operating permits for the production of brackish groundwater.

District rules. The bill would allow a district located over any part of a designated brackish groundwater production zone to adopt rules to govern the issuance of permits to complete and operate a well to withdraw brackish groundwater. A GCD would be required to adopt rules within 180 days if it received a petition from a person with a legally defined interest in groundwater in the district. Rules would govern permit terms, applications, monitoring systems, and annual reports.

A district would have to provide that an application for a brackish groundwater production zone operating permit would be processed in the same way as an application for a fresh groundwater well operating permit. District rules relating to brackish groundwater operating permits would have to be consistent with and could not impair the property rights of a landowner to drill or produce the groundwater below the surface of his or her land.

Permit terms. A person could obtain a brackish groundwater production zone operating permit for a municipal project to provide a public source of drinking water and a project to generate electricity. A permit would allow a rate of withdrawal of brackish groundwater consistent with, but not exceeding, the amount of brackish groundwater the zone was capable of producing as identified by the Texas Water Development Board (TWDB). The permit would have a minimum term of 30 years.

Permit applications. A permit application would have to include the proposed well field design, the requested maximum groundwater withdrawal rate, the number and location of monitoring wells needed, and a report on the projected effects of the proposed production on water levels and quality in the same or an adjacent aquifer in the designated

production zone.

The district would submit the application to TWDB for technical review, resulting in a report on the compatibility of the proposed well field design with the production zone and recommendations for a monitoring system. The district could not hold a hearing on the application until it received this report.

Monitoring system. A GCD would be required to implement a system recommended by TWDB to monitor water levels and quality in the same or an adjacent aquifer in which the designated production zone was located. For projects located in the Gulf Coast Aquifer, a district also would have to determine if production was causing or would be likely to cause subsidence. The bill would designate the Catahoula and Burkeville confining systems and the Jasper, Evangeline, and Chicot aquifers as part of the Gulf Coast Aquifer.

Annual reports. A permit holder would be required to submit annual reports that included the amount of brackish groundwater withdrawn, the average monthly water quality, and the aquifer levels in both the designated production zone and in any monitored aquifer. Within 120 days of receiving the reports, TWDB would have to issue a report on whether the applicable brackish groundwater production was projected to cause significant aquifer level declines, negative effects on water quality, or subsidence. After receiving the report from TWDB and after a hearing, the district could amend the applicable permit to limit water production, approve a mitigation plan, or both.

Groundwater production availability. The production of brackish groundwater under a permit would be in addition to the amount of groundwater that could be produced according to district projections. A GCD would have to issue permits up to the point that the total volume of groundwater produced in a designated production zone equaled the amount of brackish groundwater that could be produced annually to achieve groundwater availability, as determined by TWDB.

Effective date. The bill would take effect December 1, 2017.

SUPPORTERS SAY:

HB 27 would establish a permitting process for alternative water supplies through the production of brackish groundwater, which is an important step toward ensuring science-based groundwater management for the state's future water supply. In 2015, the 84th Legislature enacted HB 30 by Larson, which directed the Texas Water Development Board (TWDB) to identify and designate brackish groundwater production zones. While TWDB can designate these zones, it does not have the ability to permit brackish groundwater production. This bill simply would continue efforts to diversify the state's water resources, including by relieving pressure on freshwater resources by developing drought-resistant brackish groundwater resources.

Districts could enforce any rules required by the provisions of the bill, including the required monitoring system. A GCD could create any enforcement tool it deemed necessary for a local violation of rules. Under the bill, a GCD could amend a permit or establish a mitigation plan if there was some unanticipated negative effect on water levels. The district would have the option to reference a mitigation plan in the permit itself to ensure implementation.

Concerns that the bill would leave districts open to litigation by groundwater developers are unfounded because the bill only references current law with regard to property rights and would not create a new standard. This provision would ensure that brackish groundwater permits had similar standards to fresh groundwater permits.

OPPONENTS SAY:

HB 27 would create a separate bureaucratic process for brackish groundwater permits. The TWDB already has significant authority in this area. The Legislature instead should propose a less bureaucratic way to provide greater access to brackish groundwater, as noted in the governor’s veto message on HB 2377 by Larson, a similar bill passed during the 85th Legislature's regular session.

OTHER OPPONENTS SAY:

The brackish groundwater operating permit process proposed by HB 27 could be improved by properly enforcing monitoring requirements. The bill would not impose consequences if monitoring of a designated brackish groundwater production zone found subsequent permit violations or other negative impacts. Districts should be able to hold permit holders

liable for damages by revoking or otherwise limiting a permit. The bill also does not fully explain how a district's plan to mitigate negative effects of groundwater production would gain approval or how the plan would be tracked to ensure enforcement.

The bill also should not include a specific provision prohibiting permits from infringing on property rights. These rights already are covered in statute, and this provision could leave districts open to litigation by groundwater developers.

SUBJECT: Extending the terms of groundwater exporting permits

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 7 ayes — Larson, Phelan, Ashby, Burns, Frank, Kacal, T. King

0 nays

4 absent — Lucio, Nevárez, Price, Workman

WITNESSES: For — (*Registered, but did not testify*: Claudia Russell, Central Texas Regional Water Supply Corporation; Dirk Aaron, Clearwater Underground Water Conservation District, Texas Alliance of Groundwater Districts; Ty Embrey, Middle Trinity Groundwater Conservation District; Randy Lee and Hope Wells, San Antonio Water System; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Kyle Frazier, Texas Desalination Association; Dean Robbins and Stacey Steinbach, Texas Water Conservation Association; Brian Sledge, various retail public utilities and groundwater conservation districts; Thomas Parkinson)

Against — Judith McGeary, Farm and Ranch Freedom Alliance; (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings; Elizabeth Montgomery)

On — (*Registered, but did not testify*: Larry French, Texas Water Development Board)

BACKGROUND: Water Code, sec. 36.122(i)(2) establishes that a permit to export groundwater outside the boundaries of a groundwater conservation district (GCD) has a term of at least 30 years if the GCD began conveyance construction before the permit was issued. If construction was not initiated before a permit was issued but began before the initial term of the permit expired, the term must be automatically extended to 30 years. A GCD may periodically review the amount of water exported under a permit and limit that amount if certain factors such as water availability and aquifer conditions warrant limitation.

Sec. 36.1145 requires a GCD, except in certain circumstances, to renew an operating permit without a hearing, provided that the permit holder is not requesting changes to the permit and submits the application in a timely manner, according to district rules.

Sec. 36.1146 allows a holder or a district to initiate an amendment to an operating permit upon renewal. The permit as it existed before the amendment process remains in effect either until the conclusion of the permit amendment or renewal process or the final settlement on whether a permit amendment is required.

DIGEST:

HB 275 automatically would extend on or before its expiration a permit to export groundwater outside the boundaries of a groundwater conservation district (GCD) to a term no shorter than that of the associated operating permit. The exporting permit also would be extended automatically for each additional term the operating permit was renewed or remained in effect, pursuant to Water Code, secs. 36.1145 and 36.1146, respectively. The exporting permit would continue to be subject to conditions contained in the permit as issued before its extension.

The bill would take effect December 1, 2017, and would apply only to exporting permits that expired after that date.

SUPPORTERS SAY:

HB 275 would extend groundwater exporting permit terms to align with the remainder of the related production permit, reducing uncertainty for landowners, water utilities, and groundwater conservation districts (GCDs). Under current law, exporting permits, which normally have a term of 30 years, may expire before operating permits, leaving a water project developer without the ability to transport the water it produces. By rolling forward exporting permits along with their associated operating permits, the bill would close this gap.

Under the bill, GCDs still would be able to manage permits and fulfill regulatory goals. An exporting permit would not be automatically renewed in perpetuity because it would be subject to current law governing renewals and amendments of operating permits. Current law allows a district to make changes to permits according to district rules,

which are created through a public rulemaking process. They may review water availability and aquifer conditions and change the amount of water authorized to be transferred by the permit. Exporting permits extended by the bill still would be subject to their original conditions.

OPPONENTS SAY:

HB 275 would remove the separate process of reviewing groundwater exported out of GCD boundaries by effectively combining exporting permits and operating permits. It is important for GCDs to review exporting permits periodically, rather than automatically extending them, in order to ensure concerns about water availability and aquifer conditions are fully studied. The bill should provide a process to grandfather in existing exporting permit terms as most existing permits were intended to expire after 30 years and should be subject to their original renewal procedures.

HB 275 would reduce public participation and transparency in the decision making of GCDs. The Legislature instead should propose a measure to accomplish the goals of HB 275 without inhibiting the ability of districts to respond to changed circumstances over time, as noted in the governor’s veto message on HB 2378 by Larson, a similar bill passed during the 85th Legislature's regular session.

SUBJECT: Increasing reimbursement rates for Medicaid acute care therapy

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 21 ayes — Zerwas, Longoria, Ashby, Capriglione, Cosper, S. Davis, Dean, Dukes, Giddings, Gonzales, Howard, Miller, Muñoz, Perez, Phelan, Roberts, J. Rodriguez, Rose, Sheffield, Walle, Wu

0 nays

6 absent — G. Bonnen, González, Koop, Raney, Simmons, VanDeaver

WITNESSES: For — Jessica Touron, Ageless Living Home Health; Justin Hillger, Angels of Care Pediatric Home Health; Shawn Montgomery, Countryside Therapy; Laura Montgomery, Countryside Therapy Group, Countryside Therapy Group Home Health; Steven Aleman, Disability Rights Texas; Jolene Sanders, Easterseals; Amy Litzinger, Easterseals Central Texas; Crystal Brown, MDCP/Protect TX Fragile Kids; Suzette Fields and Hannah Mehta, Protect TX Fragile Kids; Jennifer Riley, Sage Care Therapy; Stephanie Rubin, Texans Care for Children; Rachel Hammon, Texas Association for Home Care & Hospice; Jason Stark, Texas Occupational Therapy Association; Kyle Piccola, The Arc of Texas; and eight individuals; (*Registered, but did not testify*: Anne Dunkelberg, Center for Public Policy Priorities; Chris Masey and Chase Bearden, Coalition of Texans with Disabilities; Sebastien Laroche, Methodist Healthcare Ministries of South Texas, Inc.; Knox Kimberly, Upbring; Susan Armstrong; Marlene Lobberecht; Leah Stephanow)

Against — (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings; John Marler, Texans 4 Truth)

On — Greta Rymal, Charles Smith, and Jami Snyder, Health and Human Services Commission

BACKGROUND: SB 1 by Nelson, the fiscal 2018-19 general appropriations act, appropriated $24.4 million in general revenue funds and $32.4 million in federal funds to restore about 25 percent of the reductions made to

Medicaid acute care therapy reimbursement rates during fiscal 2016-17. SB 1 directs the Health and Human Services Commission to allocate the restorations among provider types and procedure codes to preserve access to care for Medicaid fee-for-service and managed care clients.

SB 1 also appropriated $14.1 million in general revenue funds and $18.6 million in federal funds for fiscal 2018 to phase in and delay the reduction of reimbursement rates for therapy assistants made during fiscal 2016-17.

Texas Constitution, Art. 3, sec. 49-g governs the Economic Stabilization Fund (ESF), also known as the "rainy day fund," including the manner in which the Legislature may appropriate money from it. Under Art. 3, sec. 49-g(m), the Legislature may appropriate money from the ESF "at any time and for any purpose" after obtaining an affirmative vote of two-thirds of the members present in each house.

DIGEST:

HB 25 would appropriate to the Health and Human Services Commission (HHSC) for Medicaid acute care therapy services $34.2 million from the Economic Stabilization Fund (ESF) and $45 million in federal funds for fiscal 2018, and $36 million from the ESF and $48.3 million in federal funds for fiscal 2019.

The bill would specify that it was the intent of the Legislature that:

- the appropriations in HB 25 be fully reflected in the reimbursement rates for Medicaid acute care therapy providers in both Medicaid fee-for-service and managed care; and
- HHSC allocate the appropriations among provider types and procedure codes for Medicaid acute care therapy services to preserve access to care for clients in both the Medicaid fee-for-service and managed care models.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership elected to each house. Otherwise, it would take effect on the 91st day after the last day of the special session, provided it was approved by two-thirds of the members present in each house as required under Texas Constitution, Art. 3, Sec. 49-g(m).

SUPPORTERS SAY:

HB 25 would fully restore funding for Medicaid pediatric acute care therapy rates and help ensure that Texas children with disabilities had access to vital services. Following cuts to reimbursement rates in fiscal 2016-17, parents have reported problems with Medicaid services, including having to wait months for their children to see a speech, occupational, or physical therapist.

Providers and parents also have reported that the cuts have caused physical, occupational, and speech therapists to close facilities, making it harder for children to access services, especially in rural areas. Without the restoration of therapy rates in HB 25, more providers could leave the profession, making it harder for parents to find a provider for their child either with or without Medicaid.

The bill also could help reduce the negative effects of cuts to the Early Childhood Intervention (ECI) program, which serves young children with disabilities and delays. Many children who receive ECI also depend on services through the Medicaid acute care therapy program, without which they could suffer permanent delays that prevent them from fully participating in society as adults.

HB 25 represents a responsible use of the Economic Stabilization Fund for a pressing budget issue. The Legislature should fully restore the cuts now, rather than risking further harm to the state's children. The study that found Texas was paying higher rates than other states was flawed and did not accurately consider variation in provider rates depending on the type of therapy service.

OPPONENTS SAY:

The ESF is meant to address one-time expenses during an economic downturn, and Medicaid funding does not qualify for that use. The state budget already partially restored reductions made in fiscal 2016-17 to Medicaid therapy services following a study that found that Texas was paying higher rates than other states. Rates should not be further increased.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have no impact on general revenue related funds during fiscal 2018-19. It would cost $70.2 million from the Economic Stabilization Fund and $93.2

million in federal funds during fiscal 2018-19.

SUBJECT: Floating the interest rate charged on deferred or abated property taxes

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 9 ayes — D. Bonnen, Y. Davis, Darby, Murphy, Murr, Raymond, Shine, Springer, Stephenson

0 nays

2 absent — Bohac, E. Johnson

WITNESSES: For — Dick Lavine, Center for Public Policy Priorities; (*Registered, but did not testify*: Chase Bearden, Coalition of Texans with Disabilities; Daniel Gonzalez and Julia Parenteau, Texas Association of Realtors)

Against — (*Registered, but did not testify*: Guadalupe Cuellar, City of El Paso; Chris Young, Linebarger; Bruce Elfant, Tax Assessor Collectors Association of Texas; Deece Eckstein, Travis County Commissioners Court; Dana Blanton)

BACKGROUND: Tax Code, sec. 33.06 allows elderly and certain disabled property owners to defer collection of property tax or abate a suit or foreclosure sale to collect a tax on the owner's homestead. Sec. 33.06(d) provides that a tax lien remains on the property and interest on the unpaid tax accrues at a rate of 8 percent.

HB 150 by Bell, enacted during the 85th Legislature's regular session, would change the above rate to 5 percent if it takes effect January 1, 2018, following voter approval of HJR 21 by Bell (Proposition 1 on the November 7, 2017 ballot).

Tax Code, sec. 33.065 allows owners of homesteads whose appraised value rises more than 5 percent in one year to defer or abate a suit to collect a delinquent tax. Sec. 33.065(g) provides that a tax lien remains on the property and interest on the unpaid tax accrues at a rate of 8 percent.

DIGEST: HB 108 would change the interest rate on unpaid property tax deferred or

abated under Tax Code, sec. 33.06 and sec. 33.065 to the five-year Constant Maturity Treasury (CMT) rate reported by the Federal Reserve. The rate on a given deferral or abatement would be the CMT rate as of January 1 of the year in which the deferral or abatement was obtained.

This bill would take effect January 1, 2018, and would apply to interest accrued for a deferral or abatement that was unpaid as of that date.

SUPPORTERS SAY:

HB 108, in response to the longstanding decrease in interest rates, would allow the interest rate charged on deferred or abated property tax liability to fluctuate along with a market interest rate. When the Legislature established the rate in current law, 8 percent was in parity with the interest rates at the time. Rates are lower today, and an 8 percent interest rate makes repayment of deferred tax liability difficult. The bill would allow rates to fluctuate with the five-year Constant Maturity Treasury (CMT) rate, which is currently around 1.8 percent. Reducing this rate to current market levels would make deferral a more accessible option for taxpayers, ensuring that it is effective in its goal of reducing burdens on property owners and keeping elderly and disabled people in their homesteads.

Any administrative burdens imposed by the bill would be worthwhile and limited to simple data entry, for which assessor-collectors are already responsible and which can be accommodated within existing resources.

Reducing the interest rate would still result in positive revenue to taxing districts, as public funds have a return of less than 1.8 percent. Moreover, deferral or abatement will remain an option regardless of any rate set by the Legislature. It is better to set a flexible rate that adjusts with changes in the market than a static rate which may be more advantageous in certain economic times.

OPPONENTS SAY:

HB 108 would increase the administrative burdens on tax assessor-collectors, as it would require reprogramming the new rate into the system every year and using different interest rates based on the date a deferral became active.

In addition, the bill might reduce the interest rate too much. The state should ensure that the law is not amended to present a tax planning

opportunity to sophisticated investors who elect to defer tax payments because they could make more by investing it themselves. Deferrals and abatements should be used only for their intended purpose: providing needed relief to property owners.

SUBJECT: Exempting deposits in the Texas Bullion Depository from property taxes

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 9 ayes — D. Bonnen, Y. Davis, Darby, Murphy, Murr, Raymond, Shine, Springer, Stephenson

0 nays

2 absent — Bohac, E. Johnson

WITNESSES: For — (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings)

Against — (*Registered, but did not testify*: Tom Tagliabue, City of Corpus Christi; Dana Blanton)

On — (*Registered, but did not testify*: Serena Kuvet and Tom Smelker, Comptroller of Public Accounts)

BACKGROUND: HB 483 by Capriglione, enacted in 2015, created the Texas Bullion Depository as an agency in the comptroller's office. The depository, to be managed by a private entity contracting with the comptroller, was established to accept deposits of precious metals from individuals and entities to be held until transferred or withdrawn, in exchange for a fee charged for the depository's services.

DIGEST: HB 239 would exempt from property taxation deposits of precious metals stored in the Texas Bullion Depository, regardless of whether the precious metal was held or used to produce income. Governing bodies of taxing units could not impose taxes on the metal.

For purposes of the tax exemption, the bill would define "precious metal" to mean a metal, including gold, silver, platinum, palladium, and rhodium, that bears a high value-to-weight ratio relative to common industrial metals and customarily is formed into bullion or specie (i.e., coins).

The bill would take effect January 1, 2018, contingent on voter approval

of the constitutional amendment proposed by HJR 38 by Capriglione, authorizing the Legislature to exempt from taxes the precious metals in the depository.

SUPPORTERS SAY:

HB 239 would implement the authority that would be established by voter approval of HJR 38 by Capriglione for the Legislature to exempt deposits in the Texas Bullion Depository from property taxes. The depository was established by the Legislature in 2015, and this summer the comptroller announced that a private vendor had been chosen to build and operate the facility. Under current law, a deposit in the facility could be subject to property taxation by a locality as the precious metals are considered tangible personal property under the Tax Code.

Creating a property tax exemption for these deposits would benefit Texas by attracting more deposits to the bullion depository, which in turn would generate revenue for the state. With the recent identification of a company to build and operate the depository, the project is on its way to commercial viability, and HB 239 would help support this effort. Exempting deposits from property taxes would not take away funds from local taxing entities or reduce their tax bases because the deposits are not currently in the state and might not come to Texas without the exemption.

OPPONENTS SAY:

Texas should not create yet another property tax exemption for a special interest group. HB 239 would specifically assist a narrow set of investors while offering limited benefit for the average Texan and chipping away at the tax bases on which local governmental entities depend.

NOTES:

According to the Legislative Budget Board's fiscal note, HB 239 would result in an indeterminate loss of local property tax revenue, depending on the value of precious metals held in the depository.

SUBJECT: Requiring physicians to report certain abortion information on minors

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 9 ayes — Cook, Craddick, Geren, Guillen, K. King, Kuempel, Meyer, Paddie, Smithee

3 nays — Giddings, Farrar, E. Rodriguez

1 absent — Oliveira

WITNESSES: For — Joe Pojman, Texas Alliance for Life; John Seago, Texas Right to Life; (*Registered, but did not testify*: Salvador Ayala, Empower Texans; Kyleen Wright, Texans for Life; Jenny Andrews, Texas Alliance for Life; Jennifer Allmon, Texas Catholic Conference of Bishops; Emily Horne, Texas Right to Life; Nicole Hudgens, Texas Values Action; Thomas Parkinson)

Against — Blake Rocap, NARAL Pro-Choice Texas; Amanda Bennett; (*Registered, but did not testify*: Rebecca Marques, ACLU of Texas; Juliana Kerker, American Congress of Obstetricians and Gynecologists - Texas District; Brenda Koegler, League of Women Voters of Texas; Amanda Williams, Lilith Fund; Heather Busby and Zoraima Pelaez, NARAL Pro-Choice Texas; Sarah Wheat, Planned Parenthood Greater Texas; Lucy Stein, Progress Texas; John Burleson, Travis County Resistance; and 11 individuals)

On — Amy Hedtke; (*Registered, but did not testify*: Jonathan Huss, Department of State Health Services; Darren Whitehurst, Texas Medical Association; Meghan Scoggins)

BACKGROUND: Health and Safety Code, ch. 170 establishes prohibited acts concerning abortion. Sec. 170.002(a) bans third trimester abortions, with certain exceptions provided under subsection (b). Physicians who abort a viable unborn child during the third trimester of pregnancy are required to certify in writing to DSHS that the abortion was necessary to prevent the death or a substantial risk of serious impairment to the physical or mental health of

the woman or that the fetus had a severe and irreversible abnormality, identified by reliable diagnostic procedures. The certification must be made within 30 days of the abortion.

25 TAC, part 1, chap. 139, subch. A, sec. 139.5(2)(B) requires a physician who performs an emergency abortion on an unemancipated minor to certify in writing to DSHS the medical indications supporting the physician's judgment that the abortion is necessary either to avert the minor's death or to avoid a serious risk of substantial and irreversible impairment of a major bodily function. The certification must be returned within 30 days of the abortion.

DIGEST:

CSHB 215 would require a physician who performed an abortion on a woman younger than 18 years old to include in her medical record and report to the Health and Human Services Commission (HHSC) how the authorization for an abortion was obtained. The physician would have to document whether:

- the woman's parent, managing conservator, or legal guardian provided written consent;
- the woman obtained a judicial bypass;
- the woman consented to the abortion if she had the disabilities of minority removed and was authorized to have the abortion without written consent required for unemancipated minors or without a judicial bypass; or
- the physician concluded that on the basis of the physician's good faith clinical judgment a condition existed that complicated the woman's medical condition and necessitated the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function and there was insufficient time to obtain parental consent.

The bill would require the physician to describe whether parental consent, if applicable, was given in person at the location where the abortion was performed or at a different place. If a woman obtained a judicial bypass, a physician would have to report:

- the process the physician or physician's agent used to inform the woman of the availability of petitioning for a judicial bypass as an alternative to the written consent required for unemancipated minors;
- whether the physician or an agent provided the court forms to the woman; and
- whether the physician or an agent made arrangements for the woman's court appearance.

Information would be confidential and not subject to open records laws, except that it could be released for statistical purposes under certain conditions. The information could be released with the consent of each person, patient, and facility identified or to medical personnel, appropriate state agencies, county and district courts, or appropriate state licensing boards for enforcement purposes. Any information released by HHSC could not identify the county where a minor obtained a judicial bypass.

CSHB 2015 also would amend reporting requirements for physicians who performed a third trimester abortion under the circumstances allowed by Health and Safety Code, sec. 170.002(b). If a physician performed a third trimester abortion because the physician determined the fetus had a severe and irreversible abnormality, the bill would require the physician to certify in writing the identified fetal abnormality. Certifications under this section would be sent to HHSC, rather than the Department of State Health Services.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the special session. It would apply only to an abortion performed on or after December 1, 2017.

SUPPORTERS SAY:

CSHB 215 would help to gather more complete data from abortions performed on minors by requiring physicians to report to the Health and Human Services Commission on how a minor's authorization for an abortion was obtained. This data would provide better information for legislators and health care providers to use when evaluating state programs and crafting policy. It also would help determine whether physicians or physicians' agents were assisting minors in obtaining a

judicial bypass for abortions.

The bill would adequately protect the privacy of women and physicians. The information would be confidential and could not be released except for statistical purposes, providing that a person, patient, or health care facility was not identified, and to certain entities for enforcement purposes.

CSHB 215 would not require a physician to obtain parental consent before performing an emergency abortion. The bill only would require a physician to document, after an abortion was performed, whether there was insufficient time to obtain parental consent.

The bill seeks to close a loophole in current reporting requirements by directing physicians to report abortions performed on all minors, not only unemancipated minors.

OPPONENTS SAY:

CSHB 215 unnecessarily would intrude upon the doctor-patient relationship by requiring physicians to report sensitive and personal medical information. Reporting details on third trimester abortions and the methods by which a minor obtained authorization for an abortion would not address a public health need. Third trimester abortions are rare in Texas and occur only because of life-threatening medical conditions of the pregnant woman or her fetus.

The bill could affect a woman's health negatively in a medical emergency because a physician first would have to consider whether there was sufficient time to acquire parental consent before performing an abortion. Delayed decision-making could endanger women's lives in emergency situations.

The bill would result in duplication of data that already must be submitted to state health officials within 30 days after the date a third trimester abortion or abortion on a minor is performed. Mandating additional reporting would place an administrative burden on physicians.

NOTES:

CSHB 215 differs from the bill as filed in that the committee substitute would exempt from the Public Information Act information and records

held by the Health and Human Services Commission (HHSC) relating to abortions performed on minors. It also would require physicians to submit reports and certifications to HHSC, rather than the Department of State Health Services.

A companion bill, SB 73 by Hughes, was approved by the Senate on July 25.